

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

**UNITED STATES OF AMERICA**

**v.**

**Case number: 5:22-cr-00046-12**

**LAKESHIA NICOLE SIMON**

**DEFENDANT’S SENTENCING MEMORANDUM AND  
MOTION FOR DOWNWARD VARIANCE SENTENCE**

Defendant Lakeshia Nicole Simon, by counsel, David Schles, submits this motion and memorandum prior to sentencing. Neither party has outstanding objections to the presentence investigation report (hereinafter “PSR”) which affect the sentencing guidelines calculations or contest the material facts. Ms. Simon (who goes by “Nicole”) objected to the Paragraph now numbered 103 in the final PSR merely to clarify that she intended to seek a downward variance, which she now does with this motion and memorandum in support.

The parties agree that Nicole’s total offense level is 15 and that she has no prior arrests let alone convictions for any other offense and is thus in criminal history category I. The advisory sentencing range for total offense level 15 and criminal history category I is 18-24 months. Ms. Simon submits that, considering the factors set forth at 18 U.S.C. § 3553 (a), a sentence of 18 months is substantially greater than necessary to comply with the purposes set forth in paragraph (2) of § 3553 (a).

Ms. Simon therefore respectfully asks this court to sentence her to a term of probation. As her offense is a Class D felony pursuant to 18 U.S.C. § 3559 (a)(4), this court may, under 18

U.S.C. § 3561 ( c )(1), impose a term of probation of not less than one nor more than five years. Ms. Simon submits that a three year term of probation, with the mandatory conditions required by 18 U.S.C. § 3563 (a) and such discretionary conditions set forth in 18 U.S.C. § 3563 (b) as apply and are advisable given the nature of her offense and her need for supervision and restriction, would constitute a fair and just sentence “sufficient, but not greater than necessary, to comply with the purposes set forth in [§ 3553 (a)(2)].”

Ms. Simon also submits that such a sentence would better serve the interests of the public in helping Ms. Simon maintain employment, support her daughter financially and emotionally, and live a law-abiding and productive life. Ms Simon also recognizes that she has suffered from marijuana dependence and other mental health issues. She agrees that conditions requiring counseling and treatment together with regular drug testing during a term of probation are advisable and would be helpful for her in maintaining her sobriety as she has done for past several months and in addressing her mental health.

Nicole is a 23 year old single mother with a two year old daughter. At the time she committed this offense, Nicole was struggling to care for and financially support her then infant daughter Jayda. It was while in this new, challenging and frightening, situation that she was approached by a long time acquaintance with the offer to make money by purchasing firearms for a third-party known to her acquaintance. The pressures of being a new mother exacerbated her anxiety and depression and clouded her judgment. She knows what she did was wrong and illegal but in a time of need she did not fully consider the consequences of her action or the potential harm that could arise from purchasing the firearms for an unknown individual. She now understands and deeply regrets her action and has fully accepted responsibility and expressed

remorse. This episode which occurred entirely within a three day window a year and half ago must be addressed but imprisoning a young mother would be a harsh response when other, more beneficial and productive, options exist.

Her otherwise spotless criminal record demonstrates that this episode represents a brief lack of judgment and not an action consistent with her character and behavior. She is now gainfully employed, taking care of her daughter and enjoys the loving support of her family. She is also now in a committed relationship and making real progress in her life. Disrupting her life and that of her daughter Jayda, causing her to lose her job and taking her away from her family would create negative consequences greater than any arguable positive consequences that could conceivably result from throwing this young woman in prison.

This is a serious offense but a term of imprisonment would not advance the purposes of sentencing set forth in § 18 U.S.C. § 3553 (a)(2) and would not serve the best interests of Nicole and her family or the community. Her interests and the interests of the community and the public at-large would be better served by placing her on a term of a probation with conditions including drug and mental health treatment and counseling and close supervision by the probation office.

At this time, Ms. Simon does not intend to call witnesses at the sentencing hearing but she will submit written statements of support to the court prior to sentencing. The sentencing hearing should require less than an hour of the court's time.

Ms. Simon again respectfully requests that this court impose a sentence of three (3) years probation.

Respectfully Submitted,  
Lakeshia Simon  
By counsel,

**s/ David Schles**

David Schles (WV Bar #6375)  
815 Quarrier Street  
Suite 306  
Charleston, WV 25301  
(304) 344-1559  
[Schleslaw@gmail.com](mailto:Schleslaw@gmail.com)

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**CERTIFICATE OF SERVICE**

I, David Schles, counsel for defendant, Lakeshia Nicole Simon, do hereby certify that on this 20<sup>th</sup> Day of October 2022, the foregoing was served upon all currently represented parties of record the following by CM/EMF electronic filing, including:

NEGAR M. KORDESTANI  
Assistant United States Attorney  
P. O. Box 1713  
Charleston, WV 25326-1713

s/ David Schles  
David Schles, WV Bar #6375  
815 Quarrier Street  
Suite 306  
Charleston, WV 25301  
(304) 344-1559  
[Schleslaw@gmail.com](mailto:Schleslaw@gmail.com)